

STATE OF CONNECTICUT

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| Docket No.: CV18- | : | Superior Court |
| | : | |
| Gloria Drummer, | : | |
| | : | |
| Plaintiff, Individually and on behalf | : | |
| of all persons similarly situated, | : | Judicial District of |
| | : | Middlesex |
| v. | : | at Middletown |
| | : | |
| State of Connecticut, | : | |
| Department of Mental Health and | : | |
| Addiction Services, Connecticut | : | |
| Valley Hospital, Whiting Forensic | : | |
| Hospital, Greater Bridgeport | : | |
| Community Mental Health Center, | : | |
| Connecticut Mental Health Center, | : | |
| And Capitol Region Community | : | |
| Mental Health Center, | : | |
| Defendants. | : | January 25, 2018 |

COMPLAINT

Introductory Statement

1. This action is brought pursuant to the Connecticut Patients' Bill of Rights, Conn. Gen. Stat. §§ 17a-540 *et seq.*

2. The named plaintiff, Gloria Drummer, and all others similarly situated are individuals who:

- A. have been indefinitely civilly committed pursuant to Conn. Gen. Stat. § 17a-498(c);

B. have not been given a periodic review required by *Fasulo v.*

Arafeh, 173 Conn. 473 (1977) [hereinafter “*Fasulo*”];

C. no longer meet commitment standards; and

D. are unnecessarily institutionalized in a state-operated inpatient psychiatric facility because of a lack of community supports and services, including supportive housing.

3. Plaintiff brings this action on behalf of herself and all others similarly situated to:

A. challenge the constitutionality of the state’s periodic review statute, Conn. Gen. Stat. § 17a-498(g);

B. to enforce the substantive constitutional right established in *Fasulo* to liberty as soon as the person does not meet commitment standards;

C. to establish policies and procedures in state-operated inpatient psychiatric facilities to ensure a timely periodic review;

D. to require the State to measure the need and create capacity for residential supports and services in the community so that a person shall be discharged to the most integrated setting appropriate with their needs within a reasonable time of not meeting state standards for civil commitment.

4. Plaintiff seeks the following declaratory and injunctive relief:
 - A. declaring Conn. Gen. Stat. § 17a-498(g) unconstitutional;
 - B. ordering policies and procedures for timely periodic review;
 - C. ordering the state to review the need and create capacity for community supports and services, including supportive housing, so as to ensure that plaintiffs are discharged to the most integrated setting appropriate with their needs within a reasonable time of no longer meeting state standards for civil commitment;
 - D. ordering the state to establish an integration plan;
 - E. ordering the state to determine the budget necessary to support that plan;
 - F. ordering the state to adequately fund community supports and services pursuant to that plan; and
 - G. ordering the state to provide those services and supports.

5. The Connecticut Patients' Bill of Rights provides for a private right of action against the State of Connecticut, the Department of Mental Health and Addiction Services and the state-operated inpatient psychiatric facilities named as defendants. The statute operates as a waiver of the state's sovereign immunity. Conn. Gen. Stat. § 17a-550; *Mahoney v. Lensink*, 213 Conn. 548, 562 (1990).

Parties

6. Plaintiff Gloria Drummer is involuntarily committed to Connecticut Valley Hospital in Middletown, Connecticut by order of Judge Joseph Marino on October 14, 2016. Ms. Drummer currently resides at Dutcher Hall, Whiting Forensic Hospital. Whiting Forensic Hospital was part of Connecticut Valley Hospital until Executive Order 63 was issued by Governor Malloy on January 2, 2018. Executive Order 63 is inconsistent with the existing statutes which combined Whiting Forensic Division into Connecticut Valley Hospital in 1995. Conn. Gen. Stat. §§ 17a-560 *et seq.*

7. The Defendant State of Connecticut funds and operates the Department of Mental Health and Addiction Services which operates the defendants Connecticut Valley Hospital, Whiting Forensic Hospital, Greater Bridgeport Community Mental Health Center, Connecticut Mental Health Center, and Capital Region Mental Health Center. Defendants are facilities as defined in Conn. Gen. Stat. § 17a-540(1).

Class Action Allegations

8. Ms. Drummer is a patient in a state-operated inpatient psychiatric facility who is ready for discharge and is being held in the hospital, unnecessarily institutionalized and segregated in violation of her state constitutional substantive due process rights to liberty, her state

constitutional procedural due process rights to a hearing initiated by the state, and her state statutory civil right to receive services in the most integrated setting.

9. Ms. Drummer brings this action on her own behalf and on behalf of two classes defined as follows:

Periodic Review Class

All psychiatric inpatients involuntarily civilly committed to a state-operated psychiatric facility who, within a reasonable degree of medical certainty, are likely to not meet commitment standards before their annual or biennial review, and who have not had a probate court periodic review requested by the facility.

Community Integration to Most Integrated Setting Class

All psychiatric inpatients involuntarily civilly committed to a state-operated psychiatric facility, who have been declared discharge ready by their treatment teams or not meeting commitment standards by the probate court, but who remain in the facility unnecessarily institutionalized and segregated for an unreasonable period of time because of a lack of appropriate placements, supports and services in the community.

10. The plaintiff classes are so numerous that joinder is impracticable. Inpatient units in state-operated facilities usually hold 15-20 patients at any given time. Connecticut Valley Hospital has eleven general psychiatry inpatient units. Greater Bridgeport Community Mental Health Center has three inpatient units. Connecticut Mental Health Center in New Haven has two inpatient units. Whiting Forensic Hospital has civil patients integrated into its five inpatient units. Capitol Region Mental Health Center has one inpatient unit. In 2017, at Connecticut Valley Hospital alone, there were 84 new civil commitments filed, 107 annual reviews, and 48 periodic reviews.

11. There are questions of law and fact common to the proposed classes, including: How to determine the constitutional right to liberty possessed by persons civilly committed to a state-operated psychiatric facility; How to determine and implement the procedural due process constitutional right to a timely periodic review of one's commitment; How to implement the right to be discharged to the most integrated setting within a reasonable period of time after not meeting commitment standards or being designated as ready for discharge by the treatment team; Whether the facility must schedule a person for periodic review; Whether the facility must request a periodic review for each person at their commitment

hearing if the patient will likely stabilize and not meet commitment standards prior to one year; What is the most integrated setting appropriate for the named plaintiff and the proposed plaintiff integration class; How soon the state must discharge a patient after the patient does not meet commitment standards or is declared discharge ready; Whether the unnecessary institutionalization and segregation of the plaintiff and the proposed integration class constitutes discrimination by the state mental health system; And, whether the DMHAS Commissioner's Policy 6.41 requires that the defendants must presume that supportive housing is the most integrated setting.

12. Ms. Drummer's claims are typical of the claims of the plaintiff proposed classes:

- A. The named plaintiff and the members of the proposed classes are all civilly committed to a state-operated inpatient psychiatric facility;
- B. The facility did not request a periodic review by a probate court;
- C. The members of the proposed plaintiff classes are or will be discharge ready or not meet commitment standards;

D. The members of the proposed plaintiff classes will be unnecessarily institutionalized and segregated because of the failure of the state to have an Integration Plan for psychiatric inpatients;

E. The state has failed to measure and respond to the need for residential services and supports in the community resulting in continued confinement of patients who are ready for discharge or do not meet commitment standards and the failure of the state to discharge them within a reasonable time to the most integrated setting.

13. The named plaintiff will fairly and adequately protect the interests of the proposed plaintiff classes.

14. Plaintiff's counsel are experienced litigators and have the resources to adequately represent the interests of the proposed plaintiff classes. Counsel are attorneys with the Connecticut Legal Rights Project (CLRP), the legal services organization created by federal consent decree to represent patients at all state-operated inpatient psychiatric facilities. Counsel have spent many years developing the class claims in this case regarding the constitutional and civil rights provided in the Connecticut Patients' Bill of Rights, including the right to liberty when patients do not

meet commitment standards, the right to periodic review of commitment, and the right to discharge to the most integrated setting with adequate supports and services in the community. CLRP will devote the attorney time and expenses necessary to prosecute the case. Counsel have not previously represented a certified class.

15. Plaintiff's claims satisfy the requirements of Practice Book § 9-8(2) in that the defendant has acted on grounds generally applicable to the proposed plaintiff classes, thereby making appropriate final injunctive and declaratory relief with respect to the proposed classes as a whole.

Statutory and Procedural Background

16. Prior to the first involuntary civil commitment statute in 1889, treatment for people with psychiatric disabilities was a matter for families and their physicians or the first selectman of the town. Due process of law was not a concern and many cases were resolved by reference to the common law defenses to battery. *Porter v. Ritch*, 70 Conn. 235 (1898)

17. The first involuntary civil commitment statute for adults with psychiatric disabilities was enacted in 1889: Public Acts 1889, Chapter 162, § 2. That statute provided that "any judge of a probate court within his probate district shall have power to commit any insane person residing in said district to an asylum in this state in the manner herein provided." The

standard for commitment, which continued until 1976, was that “such person is insane and a fit subject to be confined in an asylum.” *Porter v. Ritch*, 70 Conn. 235, 252 (1898).

18. In 1975, the United States Supreme Court held that people with psychiatric disabilities had a fundamental liberty interest under the Fourteenth Amendment not to be committed unless they had psychiatric disabilities and were a danger to self or others. Mental illness alone was insufficient for the state to restrict a person’s liberty. *O’Connor v. Donaldson*, 422 U.S. 563, 575 (1975).

19. After the United States Supreme Court ruled in *O’Connor v. Donaldson*, the Connecticut Supreme Court held that the Connecticut Constitution’s due process clause in Article First, Section 8 protects the fundamental substantive due process right of individual liberty for persons with mental illness not to remain committed unless the state proved by clear and convincing evidence that the person is a danger to self or others or gravely disabled. *Fasulo* at 483.

20. The Connecticut Supreme Court held that the fundamental right to liberty includes the procedural due process right to a judicial due process hearing in probate court to test the legal standard for commitment. That

right includes the right to periodic review of one's involuntary civil commitment. *Fasulo* at 483.

21. "Freedom from involuntary confinement for those who have committed no crime is the natural state of individuals in this country." *Fasulo* at 481. "The authority of the state to confine an individual is contingent upon the individual's present mental status, which must be one of mental illness amounting to a need for confinement for the individual's own welfare or the welfare of others or the community." *Id.* at 476. "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which an individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). "To satisfy due process, the procedure for releasing a civilly committed patient must be adequate to assure release of those who may no longer constitutionally be confined." *Fasulo* at 477.

22. After stating the principle of liberty, the Connecticut Supreme Court articulated the substantive requirements of the required hearing. Any procedure to allow the release of involuntarily confined civilly committed individuals must:

- A. take account of the controlled and often isolated environment of the mental hospital from which the confined individuals will seek release;
- B. calculate the possible incompetence of those confined, and their limited knowledge of release procedures;
- C. take account of the cost of pursuing review and the amount of effort necessary to pursue review;
- D. be adapted to the possible effect of drugs or other treatment on the patient's capacity; and
- E. be formulated with consideration of institutional pressures to rely on the medical judgments of the hospital staff rather than to pursue extra-institutional legal remedies.

Fasulo at 478.

23. Finally, the *Fasulo* Court clearly stated that a court must decide the constitutional liberty issue of release. "The state's power to confine terminates when the patient's condition no longer meets the legal standard for commitment. Since the state's power to confine is measured by a legal standard, the expiration of the state's power can only be determined in a judicial proceeding which tests the patient's present mental status against the legal standard for confinement. That adjudication cannot be made by

medical personnel unguided by the procedural safeguards which cushion the individual from an overzealous exercise of state power when the individual is first threatened with the deprivation of his liberty.” *Fasulo* at 479.

24. The Connecticut Supreme Court held “that the due process clause of the Connecticut constitution mandates that involuntarily confined civilly committed individuals be granted periodic judicial reviews of the propriety of their continued confinement.” *Fasulo* at 479. “The state, therefore, must bear the burden of initiating recommitment proceedings.” *Id.* at 480.

25. In 1977 and 1979, Connecticut amended the civil commitment statutes including the periodic review section, what is now Conn. Gen. Stat. § 17a-498(g). The amendments do not meet the minimum due process requirements laid out in *Fasulo*.

26. Connecticut is one of the very few states that provides for commitments of indefinite duration. Conn. Gen. Stat. § 17a-498(c). Many other states authorize commitment orders of limited duration, such as 30, 60 or 90 days. Those states place the burden of recommitment on the state, not the patient. In contrast, current Connecticut state law provides that a probate court commitment order is “for the period of the duration of

such psychiatric disabilities, or until he or she is discharged or converted to voluntary status. . .” Conn. Gen. Stat. § 17a-498(c)(3).

27. Connecticut’s periodic review statute, Conn. Gen. Stat. § 17a-498(g), is unconstitutional because it violates the constitutional requirements laid out in *Fasulo* that the state-operated facility request a full judicial due process review of the person’s current mental status to ensure that the patient continues to meet commitment standards. *Fasulo* mandates that the state: (a) make a determination of when the patient is likely to stabilize and not present as a danger to self or others or gravely disabled or could be reasonably placed in a less restrictive setting, and (b) request a review by the probate court to determine whether the person continues to meet commitment standards.

28. Connecticut’s periodic review statute, Conn. Gen. Stat. § 17a-498(g), violates the state constitution because it only requires a full judicial due process hearing once every two years instead of requiring an individualized assessment of each patient’s present mental status and a state-initiated full judicial due process hearing that will minimize any period of unnecessary institutionalization.

29. Connecticut’s periodic review statute, Conn. Gen. Stat. § 17a-498(g), violates the state constitution because the vast majority of patients

committed to state-operated inpatient psychiatric facilities stabilize and no longer meet commitment standards long before the mandatory two-year review, resulting in significant numbers of patients being unnecessarily institutionalized and segregated.

30. There has been no constitutional challenge to Conn. Gen. Stat. § 17a-498(g) because of the isolation and segregation of psychiatric inpatients who are unaware of their right timely to be reviewed and the fragmented nature of court-appointed counsel from the private bar.

31. Patients in state-operated inpatient psychiatric facilities have a constitutional right to be discharged as soon as they no longer meet commitment standards and a right to a full judicial due process hearing in probate court. *Fasulo* at 473.

32. Since 1999, patients in psychiatric inpatient facilities have had a right to receive services in the most integrated setting. *Olmstead v. L.C.*, 527 U.S. 581, 587 (1999). The United States Supreme Court held that unnecessary institutionalization is discrimination in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132. *Id.* at 600.

33. Patients in state-operated inpatient psychiatric facilities have a right to be discharged as soon as their present mental status indicates that they are not a danger to self or others or gravely disabled. Such patients

have a right to receive services in the least restrictive setting under state law and the Americans with Disabilities Act, which provides for the right to receive residential supports and services in the community in the most integrated setting. Both the state statutory and constitutional rights to receive services in the least restrictive setting and the ADA right to the most integrated setting are incorporated into the Connecticut Patients' Bill of Rights in Conn. Gen. Stat. §§ 17a-541 and 17a-542. "Because the patients' bill of rights is remedial in nature, its provisions should be liberally construed in favor of the class sought to be benefited." *Mahoney v. Lensink*, 213 Conn 548, 556 (1990).

34. General Statutes § 17a-541 provides in part that, "No patient hospitalized or treated in any public or private facility for the treatment of persons with psychiatric disabilities shall be deprived of any personal, property or civil rights. . ." The constitutional and civil right to discharge within a reasonable time after no longer meeting commitment standards to the most integrated setting is a civil right protected by Conn. Gen. Stat. § 17a-541.

35. General Statutes § 17a-542 provides that each patient shall have an individualized treatment plan and that "[S]uch treatment plan shall include a discharge plan which shall include, but not be limited to, (1)

reasonable notice to the patient of his impending discharge, (2) active participation by the patient in planning for his discharge, and (3) planning for appropriate aftercare to the patient upon his discharge.” The right to discharge to the most integrated setting within a reasonable period of time after a patient no longer meets commitment standards should be incorporated into Conn. Gen. Stat. § 17a-542.

36. The State of Connecticut has failed to create a mental health system of community supports and services so that committed patients can be discharged to the most integrated setting within a reasonable period of time after patients no longer meet commitment standards.

Class Representative’s Facts

37. Gloria Drummer is a patient civilly committed to a state-operated facility, Whiting Forensic Hospital.

38. Ms. Drummer is a patient with a psychiatric disability in a facility as described in the Connecticut Patients’ Bill of Rights, Conn. Gen. Stat. § 17a-540(1 – 3).

39. Ms. Drummer was civilly committed by Judge Joseph Marino, Middletown Probate Court, on October 14, 2016, after being found not competent to stand trial and not restorable for certain criminal charges in the Superior Court.

40. On August 2, 2017, the Connecticut Valley Hospital treatment team on Dutcher South 3 [hereinafter DS3], designated Ms. Drummer as ready for discharge.

41. Connecticut Valley Hospital failed to request a hearing with the Middletown Probate Court as soon as Ms. Drummer's present mental status indicated that she no longer met commitment standards.

42. On October 13, 2017, Ms. Drummer had an annual review, pursuant to C.G.S. § 17a-498(g), before Judge Marino in Middletown Probate Court. Both the independent psychiatrist, Dr. Nelkin, and the attending psychiatrist, Dr. Mitra, testified that Ms. Drummer did not meet the standard for commitment because she was not a danger to herself, not a danger to others and was not gravely disabled. Ms. Drummer's social worker on DS3 testified that there was no supportive housing or other residential placement available and that Ms. Drummer was on waiting lists with no known or estimated date of availability.

43. Ms. Drummer has been ready for discharge since August 2, 2017 and has been unnecessarily institutionalized and segregated in a state inpatient psychiatric hospital in violation of the Connecticut Patients' Bill of Rights.

Request for Relief

Wherefore, the plaintiff respectfully requests that this Court:

1. Certify this action as a class action pursuant to Practice Book §§ 9-7 and 9-8(2) with respect to the proposed classes identified herein;
2. Enter a declaratory judgment that Conn. Gen. Stat. § 17a-498(g), periodic review, violates the Connecticut Constitution;
3. Enter a declaratory judgment that the state's failure to establish and maintain a mental health system that provides adequate community supports and services so that patients in state-operated inpatient psychiatric facilities may be discharged within a reasonable time of no longer meeting commitment standards violates the Connecticut Patients' Bill of Rights.
4. Order that defendants discharge Ms. Drummer to the most integrated setting, presuming that supportive housing is the most integrated setting, and provide adequate supports and services to Ms. Drummer in her supportive housing.
5. Enter permanent injunctive relief ordering the state to provide periodic review of patients who are involuntarily civilly committed as follows:

- A. At each involuntary civil commitment hearing, the treating psychiatrist will testify within a reasonable degree of medical certainty when it is likely that the patient will stabilize and no longer be a danger to self or others or gravely disabled or be able to receive community supports and services in a less restrictive setting.
- B. At each monthly treatment team meeting, the attending psychiatrist will assess the present mental status of the patient and determine within a reasonable degree of medical certainty whether the patient no longer meets commitment standards. If the patient likely does not meet commitment standards, the unit director or social worker shall immediately request a periodic review of the patient's commitment with the probate court having jurisdiction of the matter.
- C. The treatment team shall designate and document in the patient's chart that each patient is ready for discharge as soon as the patient is likely to no longer be a danger to self or others or gravely disabled or is able adequately to receive services in a less restrictive setting. The fact that the state does not have a less restrictive setting readily available shall not be a factor in

the determination of whether the patient meets commitment standards.

D. The state and the treatment team shall presume that supportive housing, community housing with services wrapped around the individual based on the individual's preferences and needs, is the most integrated setting. The team may rebut the presumption of supportive housing only with documented facts and evidence-based evaluations and tests.

E. As soon as a patient is declared ready for discharge, the state and the facility shall discharge the patient to the most integrated setting within a reasonable period of time. The state shall establish and maintain a mental health system that has the capacity at all levels of care, with a priority for supportive housing, so that institutionalized patients in state-operated psychiatric facilities may be discharged within a reasonable period of time.

F. The state shall enact laws that authorize the probate court to order discharge to the most integrated setting, subject to contempt proceedings, if patients are not discharged within a reasonable period of time.

G. Appoint a court monitor, paid for by the defendant, to ensure that the state is in compliance with this Court's orders for injunctive relief.

6. Award Plaintiff her costs and reasonable attorneys' fees.

7. Order such other relief as the Court may deem just and proper.

Date: January 25, 2018

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